

Remarks

Applicants respectfully request reconsideration of the present case in view of the above amendments and the following remarks.

Claims 19-22 and 26-29 stand withdrawn as directed to a non-elected invention. Claims 7-10 have been canceled. Claims 1, 12, and 30 have been amended. Claims 1-6, 11-18, 23-25, and 30 are currently under examination. No new matter has been inserted. Support for the amendment of claims 1 and 30 can be found in claims 7-10. Support for the amendment to claim 12 can be found in the specification at least at page 13, lines 1-29.

The disclosure was objected to by the Examiner because of informalities. Applicants have amended the paragraph previously inserted at page 1 to provide the current status of the nonprovisional parent application, and have amended the paragraph on page 9 to replace "colorforming" with --color forming--. Applicants respectfully request that this objection be withdrawn.

35 U.S.C. § 112

Claims 9-15, 25 and 30 were rejected under 35 U.S.C. § 112, second paragraph, as indefinite. Applicants respectfully traverse this rejection.

Specifically, the Examiner asserted that proper antecedent basis was lacking in claims 9, 11, and 13-14 for the term "the first polymeric matrix." In response, claim 1 has been amended providing proper antecedent basis for this term.

The Examiner alleged that it was unclear how claim 25 provided a further limitation. In response, Applicants assert that claim 25 properly provides a further limitation of the feature "packaging for a food product," as found in claim 23, because packaging for different types of food products can be structurally distinct.

Finally, the Examiner pointed out a typographical error in claim 30. In response, claim 30 has been amended to correct this error. Applicants respectfully request that this rejection be withdrawn.

35 U.S.C. § 102(b)

Claims 1-8, 14, 17-18 and 30 were rejected under 35 U.S.C. § 102(b) as anticipated by Mallow (US 5,183,763). Applicants respectfully traverse this rejection.

Claims 1 and 30 include the feature of “the first polymeric matrix is formed by an acid catalyzed polymerization of a monomer material comprising a tetraalkoxysilane, an alkyl trialkoxysilane, or a mixture thereof.” Mallow does not disclose or suggest this feature. Therefore, Mallow does not anticipate claims 1 or 30. As claims 2-6, 14, 17-18, and 30 are dependent on claim 1, they are also not anticipated. Applicants respectfully request that this rejection be withdrawn.

Claims 1, 11-18 and 30 were rejected under 35 U.S.C. § 102(b) as anticipated by Attar (US 4,840,919). Applicants respectfully traverse this rejection.

Claims 1 and 30 include the feature of “the first polymeric matrix is formed by an acid catalyzed polymerization of a monomer material comprising a tetraalkoxysilane, an alkyl trialkoxysilane, or a mixture thereof.” Attar does not disclose or suggest this feature. Therefore, Attar does not anticipate claims 1 or 30. As claims 11-18 and 30 are dependent on claim 1, they are also not anticipated. Applicants respectfully request that this rejection be withdrawn.

35 U.S.C. § 103(a)

Claims 1-18, 23-25 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Wolfbeis (US 5,407,829) in view of Attar, Balderson (US 5,439,648), Kanakkanatt (US 5,501,945) and Myerson (US 5,501,836), or Mallow. Applicants respectfully traverse this rejection.

Wolfbeis discloses the use of silicones. See col. 3, lines 18-19 and col. 4, lines 31-34. Wolfbeis does not disclose or suggest a first polymeric matrix “formed by an acid catalyzed polymerization of a monomer material comprising a tetraalkoxysilane, an alkyl trialkoxysilane, or a mixture thereof” as required by claims 1 and 30.

Attar, Balderson, Kanakkanatt, Myerson, and Mallow do not cure the deficiencies of Wolfbeis. Neither Attar, Balderson, Kanakkanatt, or Mallow disclose or suggest a first

polymeric matrix “formed by an acid catalyzed polymerization of a monomer material comprising a tetraalkoxysilane, an alkyl trialkoxysilane, or a mixture thereof” as required by claims 1 and 30. Myerson discloses the use of a sol-gel glass but does not disclose or suggest a first polymeric matrix “formed by an acid catalyzed polymerization of a monomer material comprising a tetraalkoxysilane, an alkyl trialkoxysilane, or a mixture thereof” as required by claims 1 and 30.

Therefore, the combination of Wolfbeis, Attar, Balderson, Kanakkanatt, and Myerson or Mallow fails to teach or suggest every element of claims 1 and 30. Accordingly, Wolfbeis, Attar, Balderson, Kanakkanatt, and Myerson or Mallow fail to render claims 1 or 30 obvious. As claims 1-6, 11-18, and 23-25 are dependent on claim 1, they are also not rendered obvious. Applicants respectfully request that this rejection be withdrawn.

Applicants also draw Examiner’s attention to amended claim 12. Claim 12 requires a second polymeric matrix that “covers all of the first polymeric matrix except for an edge of the first polymeric matrix.” As color diffuses through the indicator compound disposed within the first polymeric matrix with increased exposure to the volatile bases, this feature allows food quality to be determined by measuring the distance of color diffusion over a predetermined time period at a particular temperature. This feature is not disclosed or suggested by the combination of Wolfbeis, Attar, Balderson, Kanakkanatt, and Myerson or Mallow. Applicants respectfully request that this rejection be withdrawn.

Conclusion

In view of the above amendments and remarks, Applicants assert that the pending claims are in condition for allowance and respectfully request a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,



9/22/04
Date

Mark E. Deffner
Reg. No. 55,103
Merchant & Gould P.C.
P. O. Box 2903
Minneapolis, MN 55402-0903
(612) 332-5300

MED:kf

23552

PATENT TRADEMARK OFFICE